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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 CHAO CHEN, individually and on behalf
12 of those similarly situated,

13 Plaintiff,

14 v.

15 THE GEO GROUP, INC.,

16 Defendant.

CASE NO. 3:17-cv-05769-RJB

ORDER ON PLAINTIFF'S
MOTION FOR LEAVE TO AMEND
CLASS ACTION COMPLAINT

17 THIS MATTER comes before the Court on Plaintiff's Motion for Leave to Amend Class
18 Action Complaint. Dkt. 78. The Court has considered the motion and the remainder of the file
19 herein.

20 Plaintiff Chao Chen seeks leave to amend his class action complaint (Dkt. 1) to substitute
21 three individuals as named plaintiffs and to withdraw Mr. Chen as a named plaintiff. Dkt. 78.
22 The proposed First Amended Class Action Complaint for Damages (Dkt. 78-1) introduces as
23 plaintiffs three individuals: Ugochukwu Goodluck Nwauzor, Fernando Aguirre-Urbina, and
24

1 Fabiola Alicia Camorlinga Cruz. The second version of the First Amended Class Action
2 Complaint for Damages, filed in Plaintiff's Reply (Dkt. 82), drops Ms. Cruz as a named plaintiff.
3 Dkt. 82-1. *See* Dkt. 80 at 7. For purposes of considering Plaintiff's motion, the Court will
4 construe the second version (Dkt. 82-1) as the operative proposed complaint.

5 The proposed complaint adds two substantive paragraphs, which provide detail about the
6 two proposed plaintiffs. About Mr. Nwauzor, the proposed complaint alleges that he resides in
7 Kent, Washington, was detained at the Northwest Detention Center (NWDC) from
8 approximately 2016 until January 2017, and is a Nigerian citizen granted asylum by the United
9 States in January of 2017. Dkt. 82-1 at ¶3.1. About Mr. Aguirre-Urbina, the proposed complaint
10 alleges that he has been detained since around September 2012 and is a citizen of Mexico. *Id.* at
11 ¶3.2. Other than these two paragraphs, the proposed complaint is identical to the Complaint,
12 except for minor, non-substantive changes, e.g., modifying the Complaint to reflect a plural,
13 rather than a singular, number of plaintiffs. *Compare* Dkt. 1 at ¶1.1, 1.2; Dkt. 82-1 at ¶1.1, 1.2.

14 Fed. R. Civ. P. 15(a)(2) provides that "a party may amend its pleading only with the
15 opposing party's written consent or the court's leave. The court should freely give leave when
16 justice so requires." This is a policy to be applied with extreme liberality. *Owens v. Kaiser*
17 *Found. Health Plan, Inc.*, 244 F.3d 708, 712 (9th Cir. 2001). Courts may consider numerous
18 factors, including undue delay, bad faith or dilatory motive, repeated failure to cure deficiencies
19 by amendments previously allowed, undue prejudice to opposing parties, harm to the movant if
20 leave is not granted, and futility of the amendment. *Foman v. Davis*, 37 U.S. 178, 182 (1962);
21 *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003). Prejudice is the
22 touchstone of the inquiry, wherein "[n]ot all of the factors merit equal weight." *Id.*

23 Defendant invokes prejudice, lack of diligence, bad faith, and futility.
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1 *1. Prejudice.*

2 Defendant is prejudiced, Defendant argues, because the proposed plaintiffs cannot
3 survive a motion for class certification and should not be permitted to be used as placeholders.
4 Dkt. 79 at 8-10. This is an argument on the merits of class certification, which the Court has not
5 reached. Whether the proposed plaintiffs can survive a motion for class certification remains
6 unresolved. Dkt. 77 at 4. The Court may look askance at future efforts to amend the named
7 plaintiffs, but presently, Plaintiff has made the threshold showing that the amendment is offered
8 to reach the merits of this case.

9 Defendant also argues that it suffers prejudice from insufficient time to conduct discovery
10 of the proposed plaintiffs. Dkt. 79 at 11. This argument lacks merit, because it was at
11 Defendant's request, to mitigate prejudice to Defendant, that the Court ordered an abbreviated
12 timeline. Dkt. 77 at 3.

13 Defendant has only articulated possible prejudice, which is conjecture. The Court finds
14 only minimal prejudice to Defendant.

15 *2. Diligence.*

16 Defendant argues that Plaintiff has shown a lack of diligence by counsel's deficient
17 preparation of Mr. Chao Chen's class representation. Dkt. 79 at 10, 11. Defendant also points to
18 Plaintiff's withdrawal of proposed plaintiff Ms. Cruz based on travel limitations imposed by
19 probation, and the fact that Plaintiff has proceeded with proposed plaintiff Aguirre-Urbina
20 despite known mental health issues. *Id.*

21 On the record shown, Plaintiff's decisions are better characterized as tactical decisions.
22 Plaintiff has adjusted his strategy based on clients' needs and input. Defendant has not shown a
23 lack of diligence.

3. *Bad faith.*

According to Defendant, Plaintiff acts in bad faith, because counsel proposed, then withdrew, Ms. Cruz as a proposed plaintiff, and still proposes Mr. Aguirre-Urbina as a plaintiff, despite his known mental health issues. Dkt. 79 at 11.

4. *Futility.*

Defendant argues that amending the Complaint is futile, because both proposed plaintiffs have “automatic disqualifiers that preclude GEO from hiring them” as ‘employees,’ given their undocumented statuses. Dkt. 79 at 11, 12. The futility argument is in part a rehash of the merits, and it assumes a certain interpretation of the GEO-ICE contract. *See* Dkts. 29 and 67. The proposed complaint alleges no more—and no less—plausible facts than the Complaint.

* * *

THEREFORE, it is HEREBY ORDERED:

1 IT IS SO ORDERED.

2 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
3 to any party appearing *pro se* at said party's last known address.

4 Dated this 13th day of June, 2018.

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6 ROBERT J. BRYAN
7 United States District Judge